IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 516

THE OHIO OIL COMPANY, A CORPORATION,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

W. HUME EVERETT,
HAROLD H. HEALY,
P. O. Box 120,
Casper, Wyoming,
Attorneys for Petitioner.

Of Counsel:
A. M. GEE,
HAL W. STEWART,
CALVIN A. BROWN,
Findlay, Ohio.

THE BYRNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, The Ohio Oil Company, prays for a Writ of Certiorari requiring that this cause be certified to this Court for determination.*

*The opinions delivered in the courts below appear: Circuit Court of Appeals, 10th Circuit (R. 387): 163 Fed. 2d 633; District Court of the United States, District of Wyoming, (R. 24): 65 Fed. Supp. 991.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On August 25, 1920, the Secretary of the Interior, acting pursuant to authority granted by the Oil Lands Leasing Act of Feb. 25, 1920, 41 Stat. 437, issued a lease, under Section 19 thereof, to petitioner's assignors, embracing lands in the Lance Creek Field, Wyoming (R. 301). So far as is material here, the lease provided for a royalty on all oil produced of 12½%. On November 10, 1937, with the approval of the Secretary of the Interior, a unit agreement was entered into by petitioner and other operators of oil and gas leases in the Lance Creek Field (R. 256). Said agreement unitized the operations of the parties signatory thereto and provided, pursuant to the Act of August 21, 1935 (Appendix, p. 11), as to each of the Government leases covered thereby, including petitioner's lease, that same "shall continue in force beyond the 20 years specified in the lease, and until the termination of said agreement; * * *" (R. 272).

This case involves royalties due the Government under said lease for the period from July 1, 1939 to April 1, 1941, (R. 26) the Government contending that petitioner must account for royalty oil produced during said period on the basis of an assumed value of $1.02 per barrel, as fixed and determined by the Secretary of the Interior (R. 38), rather than on the basis of 77¢ per barrel, actually received for said oil by petitioner, which was the only and highest price obtainable for such oil in the Lance Creek Field and which was the price for which petitioner was bound to sell 95% of its oil under written contracts dating back to August 5, 1936 (R. 36).

With the exception of a period of one year during which royalty oil was received in kind, the Government at all times prior to May, 1939, accepted without objection, as payment in full for its royalty under said lease, the amounts paid to it by petitioner each month, based upon the prices received by petitioner for the royalty oil (R. 38). In May, 1939, the Secretary of the Interior, proceeding *ex parte*, fixed and established, effective July 1, 1939, for the purpose of computing royalties due the Government on crude oil produced from Federal land in the Lance Creek Field, a minimum field price, for such oil of $1.14 per barrel (R. 227). Petitioner and other operators in the Lance Creek Field protested this action and in February, 1941 (R. 293) such minimum field price (effective as of July 1, 1939) was fixed at $1.02 per barrel by the Secretary under his ruling (R. 294) that he "has authority to fix, for purposes of Government royalty computation, a *reasonable* minimum valuation for crude oil produced from Federal lands * * *" and that "under the terms of the mineral leasing act, the regulations thereunder and the terms and provisions of the leases here involved, the authority to fix a *reasonable* minimum price for Government royalty oil exists and has been validly exercised in this case." (Emphasis ours unless otherwise indicated.) Such price so fixed was still 25¢ per barrel higher than the price of 77¢ per barrel, for which petitioner had in good faith contracted to sell its oil and which the undisputed evidence in this case shows was the highest price received in a fair and open market, not only for the oil produced from this lease but for all oil produced from the Lance Creek Field (R. 39-40). The period in controversy ended April 1, 1941, at which time the Government elected to receive its royalty oil in kind (R. 37).

Petitioner refused to pay the difference between 77¢ and $1.02 per barrel of Government royalty oil produced from

its lease during the period from July 1, 1939, to and including March 31, 1941, which amounted to $9,186.96 (R. 38-39), until threat was made in April, 1942, by the Department of the Interior that unless such payment was forthcoming suit would be instituted to recover such amount and to cancel petitioner's lease (R. 329). Said sum of $9,186.96 was paid by petitioner to the Government under protest and was accepted by the Government upon its express agreement that said money would be deposited in a special trust fund and "held in that account pending a final judicial determination as to the authority of the Secretary of the Interior to require the payment of the money as royalty due under the lease," and that "should it be finally determined judicially that such authority is not vested in the Secretary the money held in the trust fund account, or so much thereof as you may be entitled to receive, will be repaid to your company" (R. 299, 300, 381 and 384).

Petitioner thereupon brought the present suit under the Tucker Act, 24 Stat. 505, 28 U. S. C. A. Sec. 41 (20), in the District Court of the United States for the District of Wyoming to recover from the United States such sum of $9,186.96 so paid (R. 1).

A trial was had to the court which resulted in findings of fact and conclusions of law favorable to petitioner's position (R. 35) and judgment was rendered by the trial court in favor of petitioner and against the Government for the above sum (R. 42).

The Government appealed the case to the United States Circuit Court of Appeals for the Tenth Circuit wherein such judgment was reversed.

The Circuit Court of Appeals, in so doing, held, *inter alia*, that:

1. "The *original Mineral Leasing Act of 1920*, which *authorized* the granting of *mineral leases* on the public

domain, *also blueprinted their terms and conditions.*" (R. 393.)

2. "* * * *neither the original Act, nor the lease contract executed in pursuance thereof, purport to authorize the Secretary to fix and determine the minimum value of the royalty oil. On the contrary, the legislative history of the Act indicates a deliberate purpose to withhold such power from the Secretary.* See Congressional Record Vol. 58, p. 4733-4735, 66th Congress, 2d Session." (R. 394.)

3. "* * * in all of his transactions with the lessee, *the Secretary* acted for and on behalf of the Government in a proprietary capacity, and that his *contractual powers were measured by the basic enabling Act and amendments thereto.*" (R. 396.)

4. "We have no doubt of the power of the Secretary, acting in the public interest, to require as a condition to his approval of the unitization and extension agreement, *that all development and operation thereunder should be subject to operating regulations* which were in effect when the agreement was made, * * *." (R. 397.)

5. By entering into the Lance Creek Unit Agreement (R. 256) petitioner agreed to be bound by Section 3(e) of the Oil and Gas Operating Regulations, promulgated and approved by the Secretary of the Interior, effective December 1, 1936, which reads in part as follows:

> "The value of production, for the purpose of computing royalty, in the discretion of the Secretary * * * may be calculated on the highest price per barrel, paid or offered * * * at the time of production in a fair and open market for the major portion of like quality oil * * * produced and sold from the field where the leased lands are situated; but under no conditions shall the value of any of said substances for the purpose of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale therof or *less*

than such reasonable minimum price as shall be determined by said Secretary." (R. 396.)

and that said Regulation 3(e) was valid and subsisting and by its terms authorized the Secretary to determine the reasonable minimum value of the royalty oil. (R. 397.)

6. "* * * the oil in question was sold * * * for a uniform price of 77¢ per barrel under * * * contract * * *" and "* * * that the producers were obligated to and did sell and deliver approximately sixteen million barrels of oil thereunder, * * *." (R. 399) and "We have no doubt of the bona fides of the contract, * * *." (R. 400.)

7. "From the record before us, we are convinced that the Secretary's determination of reasonable minimum value of the royalty oil is not unlawful, inequitable, arbitrary and unreasonable, * * *." (R. 401.)

It is petitioner's contention that the Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this Honorable Court. (Supreme Court Rule 38. 5. (b).)

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938, 28 U. S. C. A. Sec. 347 (a). The judgment of the Circuit Court of Appeals was entered September 10, 1947, (R. 401); an order was entered September 18, 1947, extending time for filing petition for rehearing to and including October 15, 1947, (R. 401); Petition for Rehearing was filed October 15, 1947, (R. 422), and was denied October 22, 1947, (R. 423).

QUESTIONS PRESENTED.

1. Whether the Secretary of the Interior may, by regulation, create in himself the power to fix and determine the reasonable minimum value of royalty oil under a lease issued pursuant to the Oil Lands Leasing Act of Feb. 25, 1920, as amended, (41 Stat. 437), where said Act not only does not purport to grant any such power but the legislative history thereof indicates a deliberate purpose to withhold such power from the Secretary.

2. Whether the Secretary of the Interior may arrogate unto himself the power to fix and determine the reasonable minimum value of royalty oil, by requiring Government lessees to adopt a departmental regulation to that effect as a part of a unit agreement, which to become effective under the Oil Lands Leasing Act, as amended, must have his approval (see p. 11, Appendix); and, if so, whether properly construed, the Lance Creek Unit Agreement (R. 256) incorporated therein Section 3(e) of the Oil and Gas Operating Regulations in effect on December 1, 1936.

3. Whether, if such power to fix and determine the reasonable minimum value of Government royalty oil be conceded, the Secretary of the Interior may validly fix the value of such oil at $1.02 per barrel regardless of the fact that the undisputed evidence shows that 77¢ per barrel was all that was received for it and all other oil from the Lance Creek Field in bona fide sales in a fair and open market, and require petitioner to account to the Government on the basis of such higher figure.

SPECIFICATIONS OF ERROR TO BE URGED.

1. The Court below erred in failing to hold invalid that portion of Section 3 (e) of the Oil and Gas Operating Regulations in effect December 1, 1936, which purports to grant to the Secretary of the Interior the power to fix and determine the reasonable minimum value of Government royalty oil.

2. The Court below erred in holding that the Secretary of the Interior could validly acquire the power to fix and determine the reasonable minimum value of Government royalty oil, by requiring as a condition to his approval of the Lance Creek Unit Agreement that provision therefor be included in such agreement (R. 397).

3. The Court below erred in holding that by the terms of the Lance Creek Unit Agreement there was incorporated therein, by reference, Section 3 (e) of the Oil and Gas Operating Regulations (R. 397).

4. The Court below erred in failing to hold that the minimum value of $1.02 per barrel, as fixed and established by the Secretary of the Interior, was arbitrary and unreasonable as a matter of law and that the sum of $9,186.96 was illegally exacted from petitioner.

REASONS FOR GRANTING PETITION.

We have here a situation where there is not only no Federal Statute expressly authorizing the Secretary of the Interior to fix and determine the reasonable minimum value of Government royalty oil, but the legislative history of the

Oil Lands Leasing Act indicates a deliberate purpose to withhold such power from the Secretary (Congressional Record Vol. 58, pp. 4733-4735, 66th Congress, 2d Session). Yet the Secretary proceeds in this case to fix and determine such value basing his right to do so on a regulation he himself promulgated. In carrying out this asserted power, he disregarded the actual conditions facing operators in the Lance Creek Field and required petitioner to account to the Government for the value of its royalty oil on the basis of $1.02 per barrel when such oil in a fair and open market was worth no more than 77¢ per barrel.

The asserted power, which has been sustained by the judgment of the Circuit Court of Appeals, to elect to take the value of Government royalty oil and to be the sole judge of the value of that oil, is so drastic and of such far reaching consequences to the many individuals, firms and corporations holding oil and gas leases on Government lands, including petitioner, that final word on the subject should come from this Honorable Court, which to date has not passed upon the questions herein presented.

It is respectfully submitted that this petition should be granted.

W. Hume Everett,
Harold H. Healy,
P. O. Box 120,
Casper, Wyoming,
Attorneys for Petitioner.

Of Counsel:
A. M. Gee,
Hal W. Stewart,
Calvin A. Brown,
Findlay, Ohio.

APPENDIX.

It is petitioner's contention, supported by the trial court (R. 32) and by the Circuit Court of Appeals (R. 394), that neither the original Oil Lands Leasing Act (41 Stat. 437) nor any amendment thereto, has authorized or empowered the Secretary of the Interior to fix the minimum value or price of royalty oil; consequently petitioner deems it unnecessary and improper to set forth such Act herein in its entirety. It is to be noted that Section 19 of such Act, under which petitioner's lease was issued, has never been amended.

In connection with consideration of Question No. 2 and Specification of Error No. 2 above, petitioner is quoting the pertinent portions of Section 17 of said Act as amended August 21, 1935, c. 599, Sec. 1; 49 Stat. 676; 30 U. S. C. A. Sec. 226.

* * * * *

"The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases hereafter issued under any section of this Act be conditioned upon an agreement by the lessee to operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States:

* * * * *

"Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: PROVIDED, That *any such lease that*

has become the subject of a cooperative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, *which plan has the approval of the Secretary of the Department* or Departments *having jurisdiction* over the Government lands included in said plan as necessary or convenient in the public interest, *shall continue in force beyond said period of twenty years until the termination of such plan;* AND PROVIDED FURTHER, That said Secretary or Secretaries shall report all leases so continued to Congress at the beginning of its next regular session after the date of such continuance.

"Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under said plan. The Secretary of the Interior is authorized whenever he shall deem such action necessary or in the public interest, with the consent of lessee, by order to suspend or modify the drilling or producing requirements of any oil and gas lease not subject to such a cooperative or unit plan, and no lease shall be deemed to expire by reason of the suspension of production pursuant to any such order.

* * * * *

"Whenever the average daily production of the oil wells on an entire leasehold or on any tract or portion thereof segregated for royalty purposes shall not exceed ten barrels per well per day, or where the cost of production of oil or gas is such as to render further production economically impracticable the Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of oil and in the interest of conservation of natural resources, is authorized to reduce the royalty on future production when in his judgment

the wells cannot be successfully operated upon the royalty fixed in the lease. The provision of this paragraph shall apply to all oil and gas leases issued under this Act, including those within an approved cooperative or unit plan of development and operation."

Such Amendatory Act of August 21, 1935, (c. 599, Sec. 2, 49 Stat. 679, 30 U. S. C. A. 223a (b)) also provided:

* * * * *

"(b) Nothing contained in this Amendatory Act shall be construed to affect the validity of oil and gas prospecting permits or leases previously issued under the authority of the said Act of February 25, 1920, as amended, and in existence at the time this amendatory Act becomes effective, *or impair any rights or privileges which have accrued under such permits or leases.*"